U.S. Department of Justice

United States Attorney
Eastern District of New York

DMB/JPL:BWB
F.#2010R00057

271 Cadman Plaza East
Brooklyn, New York 11201

November 14, 2012

The Honorable John Gleeson
United States District Judge
Eastern District of New York
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Adis Medunjanin
Criminal Docket No. 10-19 (S-4)(JG)

Dear Judge Gleeson:

Sentencing in the above-referenced case is scheduled for November 16, 2012. For the foregoing reasons, the government respectfully requests that the Court sentence the defendant to life imprisonment. In addition, the government calls the Court's attention to a recently-decided case of relevance to the defendant's July 13, 2012 motion for a judgment of acquittal.

I. Background

As established at trial, and as set forth in greater detail in the government's September 10, 2012 response to the defendant's motion for a judgment of acquittal, between the summer of 2008 and January 2010, the defendant committed a host of heinous crimes aimed at killing and maiming his fellow American citizens in order to alter and take revenge for American foreign policy.

Specifically, during the summer of 2008, the defendant, Najibullah Zazi, and Zarein Ahmedzay decided to fight violent jihad in Afghanistan. In a meeting in Flushing, New York, they swore an oath to join the Taliban and kill American soldiers.

(T. 86-90, 442-45).[1] The defendant also unsuccessfully attempted to recruit a younger friend from the local mosque, telling him that he was obliged to fight the Americans, and that suicide bombing was an acceptable tactic. (T. 93-96, 450-51, 1010-17). After arriving in Pakistan, the men were initially unable to reach Afghanistan, and were eventually introduced to an al-Qaeda facilitator who promised them training in Waziristan in the Tribal Areas of Pakistan. (T. 102-05, 108-11, 114, 463-64, 472, 483).

In Waziristan, the defendant and his co-conspirators met high-level al-Qaeda leaders, who encouraged them to return to the United States to conduct a suicide bombing attack against a civilian target rather than remain to fight on the battlefield in Afghanistan. (T. 116, 118-19, 488-92). After a brief period of training, and watching al-Qaeda propaganda videos that vividly depicted the death and destruction wrought by such attacks, all three agreed to do so. (T. 131-39, 141-42, 162-63, 279, 502-07, 516-17, 551-52, GX 107, GX 110).

Having agreed to serve as an al-Qaeda agent, the defendant returned to the United States to wait quietly while Zazi obtained explosives training and began to construct the necessary bombs. (T. 164-65, 553-54, 566). He met with Zazi and Ahmedzay in New York to discuss the plot, and in the summer of 2009, they agreed that they would fulfill their mission by conducting a coordinated suicide bombing attack against the New York City subway system during Ramadan, or approximately September 2009. (T. 175-78, 606-11, 620, 653-55).

On September 8, 2009, Zazi began driving to New York City with the detonator and other supplies necessary to build the suicide bombs for the attack. (T. 649-51). The plan was aborted after Zazi and Ahmedzay grew suspicious that they were being watched by law enforcement. (T. 657-58, 661). Zazi was arrested on September 20, 2009. Although the defendant was not arrested at that time – he had repeatedly lied to law enforcement agents about his activities in Pakistan - his residence was searched on January 7, 2010. (T. 1377-78). Following the search, the defendant left his apartment, got into his silver Nissan Altima, and drove to the Whitestone Expressway. (T. 1715-16). The defendant then called 911 from his cellular telephone, yelling "This is Adis. We love death more than you love your life." (T. 1392; GX 116). He then crashed his car into another vehicle on

[1] "T." refers to the trial transcript and "GX" refers to government exhibits received in evidence at trial.

the Expressway in an attempt to kill himself and others. (T. 1716-18). Following his arrest, the defendant admitted much of his criminal activity, asked to be traded back to the Taliban, and reaffirmed his love for Osama Bin Laden. (T. 1391, 1397-1420).

After trial, the defendant was convicted by the jury of all nine counts against him, including (1) conspiracy to use weapons of mass destruction against persons or property in the United States, in violation of 18 U.S.C. § 2332a(a)(2); (2) conspiracy to commit murder abroad, in violation of 18 U.S.C. § 956(a)(1); (3) providing material support to al-Qaeda, in violation of 18 U.S.C. § 2339B; (4) conspiring to provide material support to al-Qaeda, in violation of 18 U.S.C. § 2339B; (5) receiving military-type training from al-Qaeda, in violation of 18 U.S.C. § 2339D; (6) conspiring to commit an act of terrorism transcending national boundaries, in violation of 18 U.S.C. § 2332b(a); (7) attempting to commit an act of terrorism transcending national boundaries, in violation of 18 U.S.C. § 2332b(a); (8) possessing a destructive device in furtherance of the crimes of violence charged in Counts Two and Five, in violation of 18 U.S.C. § 924(c); and (9) possessing a destructive device in furtherance of the crimes of violence charged in Counts One, Three, Four, Six, and Seven, in violation of 18 U.S.C. § 924(c).

II. Motion for a Judgment of Acquittal

The defendant subsequently moved for a judgment of acquittal on Count Eight, arguing that Section 924(c) does not apply extraterritorially. On November 5, 2012, approximately two months after the government filed its opposition memorandum, the Second Circuit held in United States v. Siddiqui, -- F.3d --, 2012 WL 5382482 (2d Cir, Nov. 5, 2012), that Section 924(c) does apply extraterritorially "where, as here, the underlying substantive criminal statutes apply extraterritorially." 2012 WL 5382482, *5. Accordingly, the defendant's motion must be denied.

III. Sentencing

A. Applicable Statutory and Guidelines Provision

As set forth in the Presentence Investigation Report ("PSR"), the defendant is subject to a mandatory sentence of life imprisonment. PSR ¶ 140. Specifically, because the defendant was convicted of two violations of 18 U.S.C. § 924(c), and the second violation involved a destructive device, the second violation carries a life sentence. 18 U.S.C. § 924(c)(1)(C)(ii).

The defendant is also subject to a mandatory ten-year sentence based on his violation of 18 U.S.C. § 2339D, and a mandatory thirty-year consecutive sentence based on his first violation of 18 U.S.C. § 924(c) involving a destructive device. PSR ¶¶ 137, 139. The sentences on the remaining counts are up to life imprisonment for the violations of 18 U.S.C. §§ 2332a and 956(a), and each of the two violations of 18 U.S.C. § 2332b, and up to fifteen years' imprisonment for each of the two violations of 18 U.S.C. § 2339B. PSR ¶¶ 134-36, 138.

The Guidelines similarly recommend a life sentence, based on a total offense level of 54 and criminal history category of VI. PSR ¶¶ 105, 107.[2]

B. Discussion

The judgments of Congress and the Sentencing Commission appropriately provide for a sentence of life imprisonment. There is little reason to belabor why. The defendant came to the United States at age 10, seeking asylum with his family from an oppressive civil war. He took advantage of that opportunity to gain education in New York's public schools and to practice his religion freely in its mosques. He then dedicated his life to joining a medievalist insurgency in Afghanistan, and to killing his fellow Americans serving their country overseas. He then returned to New York City with the intent to call attention to his noxious ideology by killing and maiming unnumbered everyday commuters. Nor can he argue that his plans never reached fruition: to avoid being arrested before he could fulfill his mission, he attempted to kill himself and others in a jihadist attack on a public highway. In his post-arrest statements, and up to the present day, he has never shown any suggestion of remorse, and he apparently regards his furtive premeditation of mass murder as a noble military career.

In these circumstances, no sentence short of life imprisonment would give adequate regard for justice, or sufficiently protect America's civilians and serviceman from further harm at the hands of the defendant or of those who aspire to his goals.

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[2] Although the government concurs with the Probation Department's ultimate calculation that the Guidelines sentence is life imprisonment, it notes as a technical matter that the convictions under Sections 956(a) and 2339D related to the plot to join the Taliban rather than the subway plot. PSR ¶¶ 56, 58.

IV. Conclusion

For the reasons stated above, the government respectfully requests that the Court enter a sentence of life imprisonment.

Respectfully submitted,

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cc: Clerk of the Court (JG)(by ECF)
Defense Counsel